

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1853 of 2003

in

SPECIAL CIVIL APPLICATION No 4661 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

and

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ZUBEIDABEN WD/O RASULBHAI KALUBHAI MIRZA

Versus

DILIJITSINH JADAV REGIONAL DIRECTOR

Appearance:

1. Misc.Civil Application No. 1853 of 2003
MR PREMAL R JOSHI for Petitioner No. 1
MR HARDIK C RAWAL for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and

Date of decision: 06/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. Rule. Mr. Raval, learned advocate, waives service of rule on behalf of respondent. By consent of the counsel appearing in the matter, rule is fixed forthwith.

2. Petitioner has approached this Court for the relief that the respondent has committed contempt of court and the respondent be punished accordingly for non compliance of the order passed by the learned single Judge while deciding Special Civil Application No.4661 of 2003 on 25.4.2003. According to the petitioner the direction was given to the respondent Corporation that they shall take and decide the application submitted by the petitioner dated 5.6.2000 and examine sympathetically the application of the petitioner whether she is entitled for job because of the death of her husband, who died during the course of the employment. It is also the case of the petitioner that, as per the direction given by the court, as per the Regulation the Corporation shall pass appropriate order in accordance with law while appointing the petitioner on the post of "Water Woman" or any other equivalent suitable post and pass appropriate orders in accordance with rules and regulations and Settlement of the Corporation by giving one month time from the date of receipt of the order. We have gone through the said order wherein the learned single Judge has given direction to the respondent Corporation while deciding the petition filed by the petitioner ex parte.

3. It is the case of the petitioner that the petitioner has informed about the order passed by the High Court to the respondent authority and as per letter dated 28.6.2003 the advocate for the petitioner has informed the Divisional Controller, S.T.Corporation, Race Course, Baroda about the order passed by High Court. Under the said letter the copy of the order passed by the High Court was given personally on 23.5.2003 alongwith the Application. As found from this notice, that inspite of the direction no steps were taken by the Corporation by appointing her in the service of the Corporation nor any compensation is paid. The decision was ordered to be taken within one month from the date of receipt of the order and inspite of that no decision is taken and thereby violated the order of the High Court and accordingly the respondent Corporation was informed that

to implement the order within 15 days and if no compliance is made, necessary legal steps were to be taken. The petitioner has also annexed the earlier Application which was addressed to the Divisional Controller, S.T. Corporation, Vadodara on 22.5.2003 in which she has highlighted that her husband working as a driver with the Corporation had while performing duty died on 25.7.1987 and after the death of her husband on compassionate ground application was submitted for her appointment as a water woman and through advocate, notice was also given and till then no reply has been received. As her husband had died in 1987 no compassionate appointment was given to her since last about 16 years and she was accordingly deprived of the benefit of the settlement and she has suffered financial loss and she has prayed that she may be paid arrears of salary and also appoint her immediately on the post in question. The petitioner has also annexed the labour settlement which was in force from 1.8.1987 to 31.7.1992 and as per the settlement clause (30) it provides for compassionate appointment if the person had died during service. Petitioner has also annexed the letter issued by the Divisional Controller, S.T. Corporation, Vadodara dated 21.7.2003 addressed to the petitioner in which while considering the application dated 22.5.2003 of the petitioner, the petitioner was informed that if she is interested to get appointment as a part time water woman on compassionate ground, then on receiving the letter immediately she has to forward all the documents. In this application petitioner has accordingly prayed that inspite of the direction given by the learned single Judge while deciding Special Civil application No.4661 of 2003 there was total non compliance of the direction and accordingly petitioner has prayed that the respondent authority be punished under the Contempt of Courts Act and prayed that the respondent authority be directed to implement and comply with the order passed while deciding Special Civil Application No.4661 of 2003 on 25.4.2003.

4. This application is supported with an affidavit of the petitioner dated 11.8.2003. Considering the application, as per order dated 22.9.2003 the Division Bench had issued notice which was made returnable within two weeks. The matter thereafter appeared before the court from time to time and as found from the docket sheet, the matter was adjourned for one reason or other. When the matter was before us yesterday and considering the letter which has been issued by the Corporation on 21.7.2003 addressed to the petitioner in which the petitioner was asked that if she is interested for appointment as a part time water woman then she has to furnish the necessary documents in respect of her

educational qualification, age etc. immediately to the Corporation, we inquired from Mr.Joshi whether the petitioner has shown her willingness to be appointed as a part time water woman and whether any documents, as asked for, were furnished by the petitioner. Mr. Joshi, learned advocate, appearing for the petitioner has in term on getting instruction from his client informed us that as the appointment offered was of a part time offer, even though the petitioner was entitled to be appointed on regular basis as the husband of the petitioner has expired during service and as per the settlement the respondent authority was to consider and appoint her on permanent basis and accordingly though the petitioner was informed by the respondent authority on 21.7.2003, she has not forwarded any documents to the respondent Corporation till date and accordingly the petitioner had approached this court by filing this petition and petitioner has placed reliance upon the settlement which was in force at the relevant time.

5. We think that the petitioner was ill advised as the petitioner ought to have forwarded the required documents to the respondent authority, which in fact has considered to appoint her as part time water woman and immediately when the application of the petitioner dated 22.5.2003 was received, the respondent authority had informed the petitioner to forward the required documents. We have inquired from Mr. Raval that in view of the communication issued by the Corporation to the present petitioner on 21.7.2003, whether the Corporation is still prepared to appoint her on the post of part time water woman and how much salary by way of part time she will get and accordingly we have kept this matter today for consideration. Mr.Raval, learned advocate appearing on behalf of the respondent Corporation, has on inquiry with the Corporation submitted before us that as per the requirements and as per the rules, if the person works for 4 hours as a part time water woman, she or he will get Rs.1987/- P.M. and if the person works on part time basis for 5 hours, such person will get Rs.2484/--P.M. Mr.Raval has also further informed us that if the petitioner furnishes the required information about her educational qualification and age and further statement that she has not remarried till date, the offer, which has been offered to the petitioner as back as on 21.7.2003, will stand and the Corporation will appoint her on the post of part time water woman. Mr.Raval has further submitted that even for regular appointment, the Corporation has to recruit the person who has worked on part time basis and as per the seniority on part time job, the Corporation appoints such person on permanent

cadre. Mr. Joshi, learned advocate, appearing for the petitioner has submitted that the petitioner being a very poor lady, she has not prosecuted her study and, therefore, it is not possible for the petitioner to furnish any Certificate regarding her educational qualification. However, the petitioner shall furnish the documents regarding her birth date and the petitioner also while forwarding application may submit that she has not studied in any School. Such application will be tendered to the Divisional Controller, S.T. Corporation, Vadodara at his office within 10 days from today. On receipt of the same, the respondent authority shall immediately within one week thereafter pass order appointing her on the post of part time water woman and make payment to her as part time water woman and the Corporation also shall examine her case for regular appointment on the cadre, in accordance with law.

6. While deciding this application, it is necessary for us to observe that the petitioner has approached for the job to the respondent authority as back as on 5.6.2000. As per the direction of the learned single Judge, the respondent was directed to examine such application sympathetically. Accordingly at the time when the case of the petitioner is required to be considered for her regular appointment as per Circular/Guidelines, the Corporation shall consider the case of the petitioner for such appointment on regular basis considering the date of 5.6.2000. Accordingly while disposing off this Application, we are of the view that this is not a case in which we are required to initiate contempt proceedings against the respondent as prayed for by the petitioner. Rule is accordingly disposed off in the above terms, with no order as to costs.

(D.K.Trivedi, J)

(K.M.Mehta, J)

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